

1
2
3
4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

6 * * *

7 FREDERICK H. SHULL, JR.,

Case No. 2:18-cv-01781-APG-PAL

8 Plaintiff,

9 v.

ORDER

10 THE UNIVERSITY OF QUEENSLAND, et
11 al.,

(Pet. Bill of Discovery – ECF No. 17;
Mot. Prelim. Discovery – ECF Nos. 34, 49)

12 Defendants.

13 Before the court is Plaintiff Frederick H. Shull, Jr.’s Petition for Bill of Discovery (ECF
14 No. 17) and Motion for Preliminary Discovery and Production (ECF Nos. 34, 49).¹ The Petitions
15 and Motion are referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and LR IB 1-3
16 of the Local Rules of Practice.

17 Mr. Schull is proceeding in this action *pro se*, which means he is not represented by an
18 attorney. *See* LSR 2-1. This case arises from Shull’s allegations that defendants discriminated
19 against him, and all other similarly situated medical students, on the basis of national origin.
20 Compl. (ECF No. 15). The 85-page, 21-count Complaint, filed November 5, 2018, asserts that
21 defendants’ practices violated 42 U.S.C. §§ 1983, 1988, 2000(d), and numerous other federal and
22 state laws. Mr. Shull also alleges state law claims including breach of contract, negligence, breach

23
24 ¹ ECF No. 49 is duplicative of ECF No. 34. Mr. Shull filed a Notice of Duplicative Filings (ECF No. 38)
25 acknowledging that he submitted multiple duplicates to the court. The court cautions Shull that filing
26 duplicative documents is an abusive litigation tactic that taxes the resources of the court and all of the parties
27 to this lawsuit. Once a motion is filed, filing a duplicate motion will not speed up the court’s review of a
28 movant’s request since motions are generally addressed in the order which they were filed. To the contrary,
filing duplicate motions increases the court’s workload and generally delays decision while a new round of
responses and reply deadlines run. Mr. Shull is warned that continued duplicative motion practice may
result in the imposition of sanctions, including dismissal of this case. *See Nugget Hydroelectric, L.P. v.*
Pacific Gas & Elec. Co., 981 F.2d 429, 439 (9th Cir. 1992).

1 of implied covenant of good faith and fair dealing, fraud, civil conspiracy, negligent supervision,
2 and defamation.²

3 The Complaint identifies the following defendants by name: (1) the University of
4 Queensland School of Medicine (“medical school”), (2) Ochsner Medical Group (“Ochsner”),
5 (3) U.S. Department of Education, (4) Geoff McColl, executive dean of the medical school,
6 (5) Leonardo Seoane, faculty member of the medical school and administrator employed by
7 Ochsner, and (6) Gregory McGhee, program manager of the DOE’s Office of Civil Rights in
8 Dallas, Texas. Compl. at 4–9. Mr. Shull categorizes the defendants in two groups that include 50
9 doe defendants: Group A, which consists of the medical school, Ochsner, Mr. McCall, Mr. Seoane,
10 Mr. McGhee, and doe defendants 1-50, and Group B, which consists of the DOE, U.S. Health and
11 Human Services Administration, and doe defendants 36-50. Compl. at 23–32.

12 This case is currently in its beginning stages. To date, no defendant has filed an answer to
13 the Complaint and a discovery plan and scheduling order has not been entered. Defendant Ochsner
14 filed a Motion to Dismiss (ECF No. 26) asserting this court lacks personal jurisdiction over it.
15 Defendants McColl, Seoane, and the medical school filed a Joinder (ECF No. 36) to Ochsner’s
16 motion to dismiss.³ In addition, Shull has numerous other motions pending before the district
17 judge. ECF Nos. 8, 20, 24, 25, 33.

18 In a separate order entered today, the court instructed Shull to serve defendants McColl
19 and the medical school in Australia pursuant to Rule 4(f) of the Federal Rules of Civil Procedure⁴
20 and the Hague Service Convention.

21 Mr. Shull’s Petition (ECF No. 17) asks the court to issue a “bill of discovery” to expedite
22 the identification of doe defendants 1-50. The Federal Rules do not provide for a “bill of
23

24 ² On December 14, 2018, a Notice of Related Cases (ECF No. 31) was filed stating that a related action
25 was removed to this court from the Eighth Judicial District Court of the State of Nevada. *Frederick H.*
Shull, Jr. v. The University of Queensland, 2:18-cv-02377-KJD-NJK.

26 ³ The Joinder (ECF No. 36) states that McColl, Seoane, and the medical school have not been properly
27 served with process. However, to expedite dismissal, they are specially appearing to join Ochsner’s motion
28 and seek dismissal for lack of personal jurisdiction.

⁴ All references to a “Rule” or the “Federal Rules” in this Order refer to the Federal Rules of Civil
Procedure.

1 discovery.” Litigants typically engage in discovery after the court enters a scheduling order. *See*
2 Fed. R. Civ. P. 16; LR 16-1(b). Unless a case is exempt, Rule 16 requires the court to issue a
3 scheduling order limiting the time to complete discovery, join other parties, amend pleadings, and
4 file motions. Fed. R. Civ. P. 16(b), 26(f). After the parties have held the conference required by
5 Rule 26(f), the Local Rules of Civil Practice require the parties to submit a stipulated discovery
6 plan and scheduling order. LR 26-1. If no proposed discovery plan and scheduling order is
7 submitted, the court ordinarily enters a standard order “within the earlier of 90 days after any
8 defendant has been served with the complaint or 60 days after any defendant has appeared.” Fed.
9 R. Civ. P. 16(b)(2). However, given the convoluted procedural posture of this case, the fact that
10 only one defendant has been served, that a motion to dismiss is pending, which challenges the
11 court’s jurisdiction over multiple defendants, and the unlikelihood that formal service on the
12 foreign defendants will be effectuated any time in the foreseeable future, **the court will not enter**
13 **a discovery plan and scheduling order or allow discovery to proceed until the service status**
14 **of the named defendants has been determined.**

15 Shull filed the Motion for Preliminary Discovery (ECF No. 34) on an emergency basis
16 after responding to Ochsner’s Motion to Dismiss (ECF No. 26). *See* Pl’s Response (ECF No. 32).
17 In its Rule 12(b)(2) motion, Ochsner claims it has no relationship with the State of Nevada and
18 this court lacks specific personal jurisdiction over Ochsner. Shull’s motion for discovery argues
19 that Ochsner and the medical school have refused to cooperate with service of process by
20 identifying a legal process representative. Shull asserts that a contract exists between the medical
21 school and Ochsner, and he asks the court to order Ochsner to produce the contract. He believes
22 the contract addresses whether Ochsner is prohibited from receiving legal documents on behalf of
23 the medical school, and he asks for relief in advance of a ruling on the Motion to Dismiss. His
24 request is denied.

25 Mr. Shull’s Motion appears to conflate service of process and personal jurisdiction. The
26 motion to dismiss challenges personal jurisdiction under Rule 12(b)(2), not the sufficiency of
27 process or service of process under Rules 12(b)(4) and (5). The primary focus of the court’s
28 personal jurisdiction inquiry is “the defendant’s relationship to the forum State.” *Bristol-Myers*

1 *Squibb Co. v. Superior Ct. of California*, 137 S. Ct. 1773, 1779 (2017). Thus, when ruling on the
2 Motion to Dismiss, the district judge will evaluate Ochsner's relationship with Nevada—not
3 Ochsner's relationship with Shull or the medical school. *Walden v. Fiore*, 134 S. Ct. 1115, 1122
4 (2014) (holding that the relationship between the defendant and forum state "must arise out of
5 contacts that the defendant *himself* creates" and the contacts must be "with the forum State itself,
6 not the defendant's contacts with persons who reside there") (internal quotation marks omitted).
7 Shull's Motion does not claim that the alleged contract demonstrates Ochsner's relationship with
8 Nevada. Shull has not shown how a contractual provision between the medical school and Ochsner
9 is relevant to deciding the motion to dismiss under Rule 12(b)(2). More importantly, if Shull
10 intended to argue that jurisdictional discovery was required before the motion to dismiss can be
11 decided, he was required to make that argument in his response brief.

12 The Federal Rules and Local Rule 7-2 allow a motion, a response, and a reply.
13 Supplemental filings and "surreplies" (*i.e.*, a second opposition) are expressly prohibited without
14 leave of court and "motions for leave to file a surreply are discouraged." LR 7-2(b). The Motion
15 to Dismiss (ECF No. 26) is now fully briefed with Shull's Response (ECF No. 32), Ochsner's
16 Reply (ECF No. 35), and the Joinder (ECF No. 36) by McColl, Seoane, and the medical school.
17 Unless and until the district judge orders otherwise, the motion to dismiss will be decided on those
18 filings. Schull may not file separate motions and separate memoranda or supplements in a never-
19 ending attempt to have the last word on motions before the court.

20 For the reasons explained,

21 **IT IS ORDERED:**

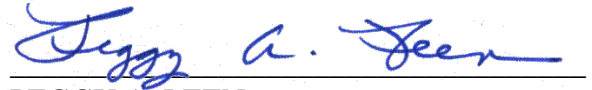
- 22 1. Plaintiff Frederick H. Shull, Jr.'s Petition for Bill of Discovery (ECF No. 17) is
23 **DENIED.**
- 24 2. Shull's Motion for Preliminary Discovery and Production (ECF No. 34) is **DENIED.**
- 25 3. No discovery will be allowed until the service of process status of the named defendants
26 has been determined.

27 ///

28 ///

1 4. No discovery motions may be filed until after the court enters a discovery plan and
2 scheduling order, and then only as allowed by the Federal Rules of Civil Procedure and
3 the Local Rules of Practice..

4 Dated this 28th day of December 2018.

5 
6 PEGGY A. LEEN
7 UNITED STATES MAGISTRATE JUDGE
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28